

Montana Water Court
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FILED
01/24/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41K-0002-R-2022
White, Eugene
5.00

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
SUN RIVER BASIN (41K)

CLAIMANTS: LF Ranch MT LLC; Donna Mantha

CASE 41K-0002-R-2022
41K 95818-00

OBJECTOR: LF Ranch MT LLC

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

All water right claims that appeared in the Preliminary Decree for Sun River (Basin 41K) were subject to "issue remarks" resulting from pre-decree examination by the DNRC, objections, and counterobjections. Claim 41K 95818-00 received a self-objection from LF Ranch MT LLC ("LF Ranch") as well as issue remarks during the

DNRC's review of the claims.

The claim was consolidated into Case 41K-0002-R-2022 to resolve the self-objection and issue remarks.

FINDINGS OF FACT

1. Claim 41K 95818-00 received the following issue remarks:

THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS 32.00 GPM PER ACRE.

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

2. On September 6, 2022, LF Ranch filed a *Response* which stated that claimant Donna Mantha agreed with LF Ranch's filed *Response*. The *Response* asserts that because claim 41K 95818-00 is a decreed right that the issue remark regarding the flow rate does not overcome the prima facie status afforded the Statement of Claim. Additionally, LF Ranch states that the point of diversion listed on the abstract is correct and is corroborated with aerial photographs which were attached to the *Response*. Finally, the *Response* states that upon the Court's removal of the issue remarks, LF Ranch's objection would be resolved.

PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.
2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.
3. A preponderance of the evidence is evidence that shows a fact is "more probable than not." *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

CONCLUSIONS OF LAW

1. Based on the information contained in LF Ranch's *Response*, the issue remarks do not overcome the prima facie status afforded the Statement of Claim for claim 41K 95818-00. The flow rate and point of diversion issue remarks should be removed from the claim. LF Ranch's objection should be considered resolved.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court adopt the changes as outlined above.

A post decree abstract of the water right claim reflecting the recommended changes is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SUN RIVER
BASIN 41K

Water Right Number: 41K 95818-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: DONNA MANTHA
PO BOX 347
AUGUSTA, MT 59410 0347

LF RANCH MT LLC
PO BOX 6196
DENVER, CO 80206 0196

OWNERSHIP UPDATE PROCESSED TO ADD NEW OWNERS. THE WATER RIGHT
MAY BE SPLIT INTO SEPARATE WATER RIGHTS UPON REQUEST OF THE OWNERS.

Priority Date: APRIL 15, 1884
Type of Historical Right: DECREED
Purpose (use): IRRIGATION
Irrigation Type: FLOOD
Flow Rate: 4.00 CFS
***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT
TO HISTORICAL AND BENEFICIAL USE.
Climatic Area: 4 - MODERATELY LOW
***Maximum Acres:** 56.60
Source Name: ELK CREEK
Source Type: SURFACE WATER
ALSO KNOWN AS SUN RIVER, SOUTH FORK.

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESWNE	10	19N	7W	LEWIS AND CLARK

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Period of Use: APRIL 1 TO NOVEMBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	21.60		E2NE	10	19N	7W	LEWIS AND CLARK
2	35.00		W2NW	11	19N	7W	LEWIS AND CLARK

Total: 56.60

THE SUN RIVER DECREE, CASE NO. 4742 IN CASCADE COUNTY. DECREES 56.60
ACRES FOR THIS RIGHT.